

1 **CITY COUNCIL OF THE CITY OF ANNAPOLIS**

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3 **ORDINANCE NO. O-31-04Amended**

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5 **Introduced by Alderwoman Carter**
6 **Alderman Cohen**
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8
9 **AN ORDINANCE** concerning

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11 **Rezoning Lonergan Bus Company Property**

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13 **FOR** the purpose of amending the existing zoning classification for a portion of the
14 Lonergan Bus Company property located at 1109 Boucher Avenue from R2, Single-
15 family residence District to R3, General Residence District; and matters generally
16 relating to said zoning map amendment.
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19 **WHEREAS,** the Annapolis City Council received a rezoning application from Basheer
20 Edgemoor Properties, LLC, to rezone 2.13 acres of the 3.25 acres
21 constituting the Lonergan Bus Company property from R2, Single-family
22 residence District to R3, General Residence District; and
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24 **WHEREAS,** the Annapolis City Council heard and received the report and
25 recommendations of the Department of Planning and Zoning and the
26 Planning Commission of the City of Annapolis upon said application on
27 October 25, 2004; and
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29 **WHEREAS,** the Annapolis City Council conducted a public hearing in conjunction with the
30 application on October 25, 2004; and
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32 **WHEREAS,** the Annapolis City Council now wishes to amend the zoning classification of
33 the Property in conformance with the 1998 Annapolis Comprehensive Plan
34 recommendation for a mixture of uses; and
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36 **WHEREAS,** having considered the application, testimony and evidence presented, and
37 the report and recommendations of the Planning Commission and the
38 Department of Planning and Zoning, and having weighed the evidence and
39 judged the credibility of witnesses appearing before it, the City Council makes
40 the following findings of fact as required by Section 21.84.060.B. of the City
41 Code of Annapolis:
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(This italicized section is to be replaced by the findings required by:

Section 21.84.060—Action by city council.

———A.———The city council shall not act upon the application until it has received a written report and recommendation from the planning commission on the proposed amendment.

———B.———The city council shall make findings of fact in each specific case including, but not limited to, the following matters: Population change, availability of public facilities, present and future transportation patterns, compatibility with existing and proposed development for the area, the recommendation of the planning commission, and the relationship of the proposed amendment to the city's plan; and may grant the amendment based upon a finding that there was a substantial change in the character of the neighborhood where the property is located or that there was a mistake in the existing zoning classification.)———

FINDINGS

1. Applicants are the contract purchasers of this property and seek to change the zoning on a portion of this property from R2 to R3. The various parcels of land currently constitute one large single zoning parcel used for the storage and operation of approximately 50 school buses and two residential parcels. The use of the property for school buses is legally nonconforming and the use itself dates back to the early 1960s.

2. The City Council finds that there was a mistake in the original zoning placed on the property and that there has been a change in the character of the neighborhood of the rezoning request sufficient to warrant a rezoning.

3. The rezoning of the property is in conformance with the laws of the State of Maryland the City of Annapolis and, as required under section 21.84.060. B of the Annapolis City Code, the City Council finds the following:

1. Population Change

According to US Census data, as reported in the applicant's statement, in 1970 the population of the census tract in which subject property is located was 8,031. The year 1970 is used in this context because that is the last time in which subject property was comprehensively zoned. The year 2000 saw an population of 8,986, or a growth of 995 persons. The applicant's statement on population change contains some data containing the age of housing in the vicinity of subject property. This discussion is not particularly germane to the population change finding, and may be somewhat misleading because a

discussion on the age of existing stock needs to include a discussion on the number of permits issues for existing stock and the extent of rehabilitation/modernization of this housing stock, which has been ongoing. A discussion of population change typically includes additional demographic data to the raw population numbers. One interesting comparison is that in 1990 9.25% of the population was age 65 and older, and 4.38% was age 55-59; in 2000 14.2% was age 65 and older which indicates a that people are generally staying in their houses. The largest demographic group is age 25-35 at 17%.

2. Availability of Public Facilities

This site is in-fill development and all municipal services are available without major extensions. As the property is currently zoned for approx 24 dwelling units and the request would allow fewer than 36 dwelling units, the incremental difference on impact to public services is less than 12 units.

3. Present and Future Transportation Patterns

Development of this site will not alter existing transportation plans or patterns. Property access/egress will use Boucher Ave and Presidents Street, both are residential collector streets. It can be anticipated that redevelopment of this property residentially will be a traffic improvement over the current use of the property for school buses. The number of trips, time of trips and vehicle mix will be compatible with current residential development.

4. Compatibility with Existing and Proposed Development

A rezoning request only implies a particular development—actual development plans are submitted subsequent to a successful rezoning request. The R3 zone in and of itself is not incompatible with existing development, and its compatibility with proposed development is difficult to ascertain since the nature of the area lends itself only to small scale redevelopment and in-fill. The split zoning requested by the Planning Department for this parcel will create visual compatibility and continuity of the street scape, and the higher density portion is ‘hidden’ from view and adjacent to multi-family development. The split zoning creates a opportunity—albeit with good site planning—for a density transition from the higher density Harbor House to the lower density single-family units on Boucher Ave.

5. The Recommendation of the Planning Commission

At the October 21, 2004 meeting of the Planning Commission, the Planning Commission unanimously voted to recommend approval of the requested change of zoning classification and made the following findings:

Existing uses of property within the general area of the property in question:

The Planning Commission concurs with staff that residential uses predominate the area in question. Specifically, the subject property abuts multi-family development on one side,

1 and is in an area that contains both of single-family and multi-family development. A
2 contextual study and an analysis of residential densities in the vicinity, submitted by the
3 applicant shows that of the 816 dwelling units in the neighborhood, 615 (75%) are
4 townhouse/multi-Family units and the remaining 201 (25%) are single-family units.
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7 **The zoning classification of property within the general area of the property in**
8 **question:**

9 The Planning Commission concurs with staff that residential zoning predominates in the
10 area in question. The subject property abuts property zoned R4 on one side. In the
11 general area of the property there is R2, R3 and R4 zoning.
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13 **The suitability of the property in question to the uses permitted under the existing**
14 **zoning classification:**

15 The Planning Commission concurs with staff that the area in question is suitable for
16 continued residential uses.

17 **The trend of development, if any, in the general area of the property in question,**
18 **including changes if any, which have taken place in its present zoning classification:**

19 The Planning Commission concurs with staff that the area in question has not changed
20 substantially from residential uses. Since this property was last zoned in 1970, a number
21 of developments have occurred. In the 1970's, Shearwater and Presidents Point were built,
22 both are multi-family developments of over 11 dwelling units/acre. In the 1980's, Hawkins
23 Cove (7 du/acre, townhouse), and Conte Gardens was rezoned from B1/R2 to R4 and
24 developed at 20 units/acre. Since Conte Gardens there has been no multi-family
25 development, and the trend has been for renovation of single-family homes. It must be
26 noted that the land uses in the area are such that the areas of various density are fairly
27 solidified. The only exception to the solid residential nature of this area is subject property
28 by light of its use as for a bus storage and operations center. This is the property that
29 effects the most destabilizing influence on the area. Based on additional information
30 submitted by the applicant dated September 23, 2004, a 56% increase in multi-family units
31 in the "neighborhood"(as defined by the applicant) has occurred since 1970, the year the
32 current comprehensive zoning map was adopted.

33 **Minimum Size of Parcel. A lot, lots or parcel of land shall not qualify for a zoning**
34 **amendment unless it possesses two hundred feet of frontage or contains twenty-five**
35 **thousand square feet of area, or adjoins a lot, lots or parcel of land which bears the**
36 **same zoning district classification as the proposed zoning amendment:**

37 The Planning Commission concurs with staff that the parcel in question meets these
38 requirements as applicable. The parcel for which rezoning 2.13 acres, above the minimum
39 lot size.

The planning commission shall not recommend the adoption of a proposed amendment unless it finds that the adoption of the amendment is in the public interest and is not solely for the interest of the applicant. The planning commission may recommend the adoption of an amendment changing the zoning classification of the property to a more restrictive district than that requested by the applicant:

The Planning Commission concurs with staff that the proposed zoning change will be in the public interest and not solely in the interest of the applicant. Currently, the property is used as a bus storage and operations lot. This is a legally nonconforming use that operates under a number of restrictions but is considered to be a nuisance in this residential area due to noise, exhaust, etc. Rezoning the property as proposed would increase the residential yield of the property by about eight units. The owner and developer assert that this increased density is necessary if the property is to be developed. There can be no doubt that moving the bus operation to an appropriate zone and developing this property residentially would be in the public interest. The type of development that may result from this rezoning would create a transitional density between Harbor House and the single-family neighborhood is not contrary to the public interest.

6. Compliance with the Comprehensive Plan

The Comprehensive Plan does not make specific recommendations for this area other than the future land use map designating this area residential (not density recommendations). One of the thrusts of the Comprehensive Plan is the preservation and enhancement of neighborhoods. Clearly the elimination of a nonconforming use that presents itself as a nuisance in this neighborhood would support every goal of the comprehensive plan relative to neighborhood preservation. The data in the applicant's statement for the City Council about population and housing stock appear correct and indicate that the neighborhood of subject property is stable and contains a mix of older, new, and newly renovated single-family homes as well as a recent townhouse development and the older, but successful, waterfront condominium developments. The most destabilizing influence in the area is the bus yard.

Providing the regulatory framework to redevelop this nonconforming use residentially supports the goals of the comprehensive plan.

7. Whether there was a change or mistake that would warrant a rezoning of the property.

In order for a governing body to approve an individual rezoning request (usually called a 'piecemeal' request), it must find that there was a mistake in the original zoning placed on the property, or that there has been a change in the character of the neighborhood of the rezoning request sufficient to warrant a rezoning. The finding of change or mistake is not exclusive, and a governing body may find that both occurred (or did not occur) in granting or denying a rezoning request. The applicant argues that both change and mistake occurred.

Evidence of Change

The applicant argues that the intensity of development around subject property, e.g. Harbor House, and the President's Point and Shearwater condominium complexes have affected the neighborhood even though they were known quantities in 1970, and that since they contain no townhouses, the neighborhood has either single-family homes or apartment/condominiums and not the full mix of housing that townhouses would afford. In actuality the change resulting from these developments is the unanticipated impact on surrounding properties that their development and occupation has caused. It is one thing to anticipate multi-family development, it is another thing to experience the effects of such development twenty or thirty years out. On the whole the development and redevelopment in the area has had a stabilizing effect, and the influx of population has put pressure on nonconforming uses (such as the bus yard) to cease. The more residents in an area the more people that are impacted by such nonconforming uses.

The operations of the bus company have also changed. Hours of operation, types of vehicles, and the number of trips differ from thirty years ago. In 1970 the City recognized that a bus yard was not appropriate and therefore zoned it R2, rendering it legally nonconforming. The rationale behind creating nonconforming uses is to a) not 'take' the property by denying a property the use of the property after rezoning; and b) hope that by restricting the use it will fade away over time. In the case of the Lonergan Property it did not fade away, and restrictions on the expansion/improvement of nonconforming property has limited, and provided a disincentive, to the owner making an investment to improve the property and/or operations of the business. The neighborhood has changed while the bus yard has remained the same, thereby creating a number of conflicts.

One other evidence of a change in the neighborhood can be seen in the fact that when rezoning was sought for this property in the late 1980's, there was no neighborhood support. Now there is abundant (though not absolute) support—something has changed.

This in and of itself would not warrant a rezoning but there appears to be ample evidence that the neighborhood has adapted to the various multi-family projects in it and by adapting their has been a change in its character over that last thirty years.

Mistake

Given the increase in residential property values in the area of the property and the degree of in-fill that has occurred, the fact that the Lonergan property remains the only large parcel of residentially zoned land in this part of Eastport that has *not* developed/redeveloped is prima facie evidence that the zoning classification applied in 1970 was inappropriate. This is a parcel that literally abuts R4 zoning developed to a high density and is in an area of R2, R3 and R4 zoning as evidenced by the applicant's exhibits. In order to alleviate a nonconforming, nuisance use (as the bus yard is) it is necessary to allow the land to develop in a manner that the value of the new development is greater than the maintenance of the nonconforming use, provided that the new development is promoted does not negatively impact the neighborhood. Obviously, zoning the Lonergan property R3 in 1970 would not have impacted the neighborhood, and would have been consistent with and provided a transition from the R4 property it abuts to the R2 zoning

beyond. R3 would not have been inappropriate and may have resulted in the property redeveloping earlier as the value of the R3 zone would have been greater than the value of maintaining the nonconforming use.

SECTION I: BE IT ESTABLISHED AND ORDAINED BY THE ANNAPOLIS CITY COUNCIL that the R3, General Residence District is hereby approved for the Property as shown in the following C. D. Meekins & Associates, Inc. maps: Portion of Tax Map Showing Existing Zoning Classification, Portion of Tax Map Showing Proposing Zoning Classification, Topographic Map Showing Existing Zoning Classifications, and Topographic Map Showing Proposed Zoning Classifications. Copies of these maps are attached hereto and incorporated herein by reference. True copies of the Zoning Maps as adopted by this ordinance shall be maintained permanently in the Department of Planning and Zoning.

SECTION II: AND BE IT FURTHER ESTABLISHED AND ORDAINED BY THE ANNAPOLIS CITY COUNCIL that this Ordinance shall take effect from the date of its passage.

ADOPTED this 14th day of February, 2004.

ATTEST:

THE ANNAPOLIS CITY COUNCIL

Deborah Heinbuch, MMC
City Clerk

BY: _____
ELLEN O. MOYER, MAYOR

EXPLANATION:

Redlining indicates matter added to existing law.

~~Strike Out indicates matter deleted from existing law.~~

Underlining indicates amendments.









